Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

DEAN BROWNING WEBB,

Petitioner,

v.

CITICORP CREDIT SERVICES, INC.;
FINANCIAL ASSISTANCE INCORPORATION,
A WASHINGTON CORP.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should this Court grant certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit, which decision indicated that federal courts may award sanctions under 28 U.S.C. § 1927 without specifying the conduct for which an attorney is sanctioned?

2. Should this Court grant certiorari to review the disparate standards applied in the circuit courts of appeal with respect to 28 U.S.C. § 1927, to decide the appropriate standard, and to indicate that § 1927 sanctions are not apt unless an attorney has, at the very least, engaged in some objectively unreasonable conduct?

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OPINIONS BELOW

On May 22, 1994, the Judge Magistrate of the United States District Court for the Oregon District made Findings and Recommendation for sanctions against Petitioner Dean Browning Webb ("Mr. Webb"). (App. 7-32). On July 27, 1994, the United States District Court for the District of Oregon adopted the Judge Magistrate's Findings and Recommendations and issued an Order granting sanctions. (App. 33-37). Mr. Webb appealed, and on January 17, 1996, the United States Court of Appeals for the Ninth Circuit issued an Opinion affirming the Order. (App. 1-6). Petitioner Webb's Petition for Rehearing was denied on February 14, 1996. (App. 38).

JURISDICTION

Judgment of the U.S. Court of Appeals for the Ninth Circuit was entered on January 17, 1996, and reconsideration was denied on February 14, 1996. This Court's jurisdiction to consider a petition from the final judgment of a United States court of appeals is invoked pursuant to 28 U.S.C. § 1254.

STATUTORY PROVISIONS

28 U.S.C. § 1927 states:

Any attorney or other person admitted to conduct cases in any of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the Court to

satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

STATEMENT OF THE CASE

In the underlying action, plaintiffs brought various claims, including RICO claims, against defendants/respondents. Mr. Webb was an attorney representing plaintiffs in the action.

The claims were dismissed with prejudice, and sanctions were awarded against plaintiffs' attorneys. This appeal seeks remand to the district court with instructions to vacate or amend the sanctions award.

The Order awarding sanctions was based on the court's having adopted "in its entirety" the May 22, 1994, Findings and Recommendation of the Judge Magistrate. (App. 35). The Findings and Recommendation of the Judge Magistrate indicated that Mr. Webb had engaged in "reckless litigation" warranting 28 U.S.C. § 1927 sanctions totalling $13,750. (App. 27, 31-32).

The Findings and Recommendation, however, did not describe what conduct warranted sanctions. The Judge magistrate "determined that the majority of the pleadings do not, in and of themselves, require sanctions". (App. 24). Indeed, each and every pleading to which defendants objected, and on which the motion for sanctions against Mr. Webb was based, was found not to warrant his being sanctioned.

For example, the Judge Magistrate specifically ruled, with respect to certain Motions for Temporary Restraining Order and Preliminary Injunction, that "[t]he court does not find that these pleadings warrant the imposition of sanctions against . . . [Mr.] Webb". (App. 18). The Judge Magistrate made similar findings with respect to the other pleadings complained about. (App. 17, 19, 20-21, 23). The Judge Magistrate noted, regarding certain miscellaneous pleadings complained about, "As with the pleadings discussed above, the court does not find that any one of the pleadings, motions or papers, standing alone, represents sufficient misconduct to support an assessment of sanctions." (App. 20-21).

Nevertheless, the Judge Magistrate recommended sanctions because of the "ugly picture that is generated when the pleadings are viewed together." (App. 24). The Judge Magistrate found that "offensive and acceptable pleadings" were "intertwined", and that at least 30% of the total defense costs could be attributed to reckless litigation. (App. 27). Sanctions were awarded accordingly.

Jurisdiction in the court of first instance was pursuant to 28 U.S.C. § 636(b)(1)(B) and F. Rule of Civ. Pro. 72(b).

ARGUMENT

1. **The district court abused its discretion when it awarded sanctions against Mr. Webb without specifying which conduct warranted sanctions. By concurrently ruling that no pleading, standing alone, warranted sanctions, that the "majority" of filings warranted no sanctions, but that certain, unspecified, pleadings, viewed together, evidenced reckless litigation, the district court made it impracticable for Mr. Webb successfully to respond that his conduct was reasonable and in good faith.**

This United States Supreme Court has never discussed what level of specificity of finding is required adequately to support sanction under 28 U.S.C. § 1927. In the only case in which it offered an extended discussion of § 1927, however, the Supreme court did note that "attorney fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record." *Roadway Express, Inc. v. Piper,* 447 U.S. 752, 767 (1980).

The statute in issue references sanction for "multiplication of proceedings" and the measure of sanctions which may be awarded is the "excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. So, by its terms, the statute's focus of inquiry is the extent to which wrongful conduct has increased litigation expenditures. It follows that a court awarding sanctions should endeavor to tie specific wrongful conduct to specific increases in reasonable litigation expenditures.

In accord, several courts of appeal have reversed section 1927 sanctions when a lower court did not adequately specify the conduct for which an attorney was sanctioned or tie the wrongful conduct to increased expenses. See, e.g., *Martin v. Brown* 63 F.3d 1252, 1264 (3rd Cir. 1995); *Browning v. Kramer,* 931 F.2d 340, 346 (5th Cir. 1991); *MGIC Indemnity Corp. v. Moore,* 952 F.2d 1120, 1122-23 (9th Cir. 1991).

Here, the lack of specificity is especially problematic. The district court did not describe which pleadings evidenced recklessness. The district court found that the "majority" of pleadings did not warrant Rule 11 sanctions, that others warranted no sanction, and that no single pleading, standing alone, warranted any sanction. Still, the court found that the timing, length, and substance of many [unspecified] of the filings were vexatious and evidenced Mr. Webb's recklessness.

Mr. Webb was left with a moving target to try to hit if he appealed. If he successfully argued that this pleading, that pleading, or those several pleadings were reasonable in the context of the litigation, success could only garner those pleadings' inclusion among the "majority" of the pleadings that the court already had held did not warrant sanctions. So, as the Findings and Recommendation was structured, Mr. Webb could not even begin to mount a serious argument to reverse sanctions.

In contrast, if the district court had specified which minority of the filings complained about evidenced bad faith, Mr. Webb could have responded that the sanctions, or their amount, were inappropriate. But, because the findings do not specify the conduct warranting sanctions,

Mr. Webb could not adequately mount a challenge and respond that those actions were reasonable and made in good faith. Likewise, Mr. Webb could not adequately respond that no increased litigation expenditures were attributable to wrongful conduct.

The Opinion endorses a sanction award not tied to specific wrongful conduct. This Court should review this decision to indicate clearly that any sanction award under § 1927 must specify the conduct for which an attorney is sanctioned and must reasonably relate the amount awarded to increased litigation expenditures arising as a result of the conduct.

2. The Circuits are in wild disagreement about the applicable standard for § 1927 analysis, and this Court should review this case to decide the appropriate standard, and to indicate that § 1927 sanctions are not apt unless an attorney has, at the very least, engaged in some objectively unreasonable conduct.

Deciding whether to hold attorneys to a subjective standard or an objective standard has proved nettlesome. The circuit courts of appeal are widely split regarding the standard an attorney is held to. The First, Sixth, and Tenth Circuits hold an attorney to an objective standard of reasonableness; unreasonable conduct multiplying litigation will warrant sanctions. See *Bolivar v. Pocklington*, 975 F.2d 28, 34 (1st Cir. 1992); *Jones v. Continental Corp.*, 789 F.2d 1225, 1230 (6th Cir. 1986); *Braley v. Campbell*, 832 F.2d 1504, 1512-1513 (10th Cir. 1987); *Griffin v. City of Oklahoma City*, 3 F.3d 336, 342 (10th Cir. 1993).

In contrast, the Second, Third, Fourth, Eleventh, and District of Columbia Circuits have ruled that an attorney must have acted with subjective bad faith before section 1927 sanctions will attach. See *MacDraw Inc. v. CIT Group Equipment Financing, Inc.*, 73 F.3d 1253, 1262 (2d Cir. 1996); *Martin v. Brown*, 63 F.3d 1252, 1264 (3rd 1995); *Brubaker v. City of Richmond*, 943 F.2d 1363, 1383 n. 25 (4th Cir. 1991); *Malautea v. Suzuki Motor Co. Ltd.*, 987 F.2d 1536, 1544 (11th Cir. 1993); *United States v. Wallace*, 964 F.2d 1214, 1217 (DC Cir. 1992).

The Seventh Circuit requires that *either* the subjective or objective standards be met. *Pacific Dunlop Holdings, Inc. v. Barash*, 22 F.3d 113, 119-120 (7th Cir. 1994). And the Fifth and Eight Circuits require that *both* subjective and objective standards be met. See *Travelers Insurance Co. v. St. Jude Hospital of Kenner, La. Inc.*, 38 F.3d 113, 119-120 (5th Cir. 1994); *N.A.A.C.P. Special Contribution Fund. v. Atkins*, 908 F.2d 336, 340 (8th Cir. 1990).

The Ninth Circuit cases are especially troubling. On one hand the circuit has endorsed the subjective standard. See *New Alaska Development Corp. v. Geutschow*, 869 F.2d 1298, 1306 (9th Cir. 1989). Yet, the circuit has in the instant case treated the subjective standard as the *less strict* standard, rather than the more strict standard. (App. 4). This goes against instinct and against the weight of other authority. (See, *discussion, Jones v. Continental Corp.*, 789 F.2d at 1230 and *Braley v. Campbell*, 832 F.2d at 1512-13, reasoning that the subjective standard is the stricter standard.)

As a consequence, the ninth circuit approach would allow sanctions for actions that are objectively reasonable, if the court believes that the reasonable actions were

made in subjective bad faith. This appears to be what the court endorsed here. The Opinion stated: "[U]nlike the Eight Circuit, we have not interpreted § 1927 to require a finding of objectively unreasonable behavior; a finding of subjective bad faith is sufficient." (App. 3-4).

This interpretation conflicts with the language of the statute, which gives a court discretion only to award sanctions for *unreasonably* and vexatiously multiplying proceedings. Furthermore, this interpretation creates a grey area wherein an attorney acting *reasonably* pursuant to zealous representation of a client might be sanctioned for that zealous advocacy. This would have a chilling effect on an attorney's representation.

No sanctions should ever attach for reasonable actions made pursuant to zealous representation of a client. This court should review this decision to bring about uniformity among the circuits and to ensure that no sanctions ever attach unless an attorney, at the very least, engages in some objectively unreasonable conduct.

CONCLUSION

For all of the reasons stated above, Petitioner, Dean Browning Webb, prays that this Court grant a Writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

Respectfully Submitted,

ALFREDO WHEELOCK,
Attorney for Dean Browning Webb

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL L. SALSTROM, et al., *Plaintiffs,* and GREGORY LAMONT GUDGER, *Appellant,* v. CITICORP CREDIT SERVICES, INC.; FINANCIAL ASSISTANCE INCORPORATION, a Washington Corporation; CONTINENTAL CREDIT, a Washington Corporation; LARRY ALDI; GUS CARLSON; CITIBANK (SOUTH DAKOTA) NA, a South Dakota Corporation, *Defendants-Appellees.*	No. 94-35816 D.C. No. CV-92-01226-HJF OPINION
MICHAEL L. SALSTROM, et al., *Plaintiffs,* and DEAN BROWNING WEBB, *Appellant,* v. CITICORP CREDIT SERVICES, INC.; FINANCIAL ASSISTANCE INCORPORATION, a Washington corp , *Defendants-Appellees.*	No. 94-35849 D.C. No. CV-92-01226-HJF

Appeals from the United States District Court
for the District of Oregon
Helen J. Frye, District Judge, Presiding

Submitted November 15, 1995*
Portland, Oregon

Filed January 17, 1996

Before: James R. Browning, Pamela Ann Rymer, and Thomas G. Nelson, Circuit Judges.

Opinion By Judge Rymer

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Alfredo Wheelock, Portland, Oregon, for appellant Dean Browning Webb.

John L. Langslet and Julie K. Bolt, Martin, Bischoff, Templeton, Langslet & Hoffman, Portland, Oregon, for the defendants-appellees.

OPINION

RYMER, Circuit Judge:

Gregory Lamont Gudger and Dean Browning Webb appeal the district court's order imposing monetary sanctions under 28 U.S.C. § 1927 and nonmonetary sanctions

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*The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a); 9th Cir. R. 34-4.

under the court's inherent power. Their primary argument is that denial of Rule 11 sanctions forecloses sanctions under § 1927. We disagree, and affirm.

I

Gudger and Webb contend that because the district court declined to impose sanctions under Fed. R. Civ. P. 11, the court is precluded from imposing sanctions under 28 U.S.C. § 1927. This argument fails because a court's findings under Rule 11 have no legally binding effect upon that court's subsequent ability to impose sanctions under § 1927. *See Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830 (9th Cir. 1986) (Rule 11 "does not repeal or modify existing authority of federal courts to deal with abuses of counsel under 28 U.S.C. § 1927"), *abrogated on other grounds in Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990).

Gudger and Webb direct us to *N.A.A.C.P. – Special Contribution Fund v. Atkins*, 908 F.2d 336 (8th Cir. 1990), in which the Eighth Circuit stated that while Rule 11 requires only a finding of objectively unreasonable behavior, "[t]his court has indicated that the language of § 1927 appears to require both a finding of objectively unreasonable behavior and a finding of bad faith." *Id.* at 340. Our colleagues concluded that where the district court had not found objectively unreasonable behavior under Rule 11, it could not subsequently find objectively unreasonable behavior under § 1927; therefore, the imposition of § 1927 sanctions was improper. *Id.* Gudger and Webb's reliance on *N.A.A.C.P.* is misplaced because, unlike the Eighth Circuit, we have not interpreted § 1927

to require a finding of objectively unreasonable behavior; a finding of subjective bad faith is sufficient. *See, e.g., MGIC Indem. Corp. v. Moore*, 952 F.2d 1120, 1122 (9th Cir. 1991) (noting that § 1927 "requires a finding of bad faith" and that "[w]e assess an attorney's bad faith under a subjective standard").

Accordingly, the court's decision to impose § 1927 sanctions after having declined to impose Rule 11 sanctions was not an abuse of discretion.

II

Gudger and Webb next contend that the district court lacked a sufficient basis for its finding of bad faith. Such a finding is required both for the imposition of monetary sanctions under § 1927, *MGIC*, 952 F.2d at 1122, and for the imposition of nonmonetary sanctions under the court's inherent power, *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980).

The court made its finding of bad faith on the basis of three factors: the number and length of the pleadings, the timing involved in many of the filings, and the substance of the claims asserted. Gudger and Webb's argument that no single factor, considered alone, would justify a finding of bad faith simply misses the point: It was the combination of these factors, converting a "simple straightforward debt collection action into a full-fledged assault," that prompted the court to impose sanctions. This finding is supported by the record and does not constitute an abuse of discretion.

III

Gudger and Webb contend that the § 1927 sanctions constitute impermissible postjudgment retribution, relying primarily on *In re Yagman*, 796 F.2d 1165, *amended on other grounds*, 803 F.2d 1085 (9th Cir. 1986). They read *Yagman* to prohibit the district court from waiting until the end of trial to impose sanctions. Although *Yagman* does endorse the imposition of sanctions as soon as the misconduct occurs, it goes on to note that "by this we do not condemn as inappropriate in all cases the procedure of withholding the sanctions until the end of trial. In some situations, liability under proper sanctioning authority will not be immediately apparent or may not be precisely and accurately discernible until a later time." *Id.* at 1183. Such is necessarily the case where, as here, the sanctions are based upon the cumulative effect of the attorneys' conduct.

Nor did the district court run afoul of *Yagman* in concluding that it would be impossible to determine with mathematical precision the amount of attorney's fees and costs incurred by Citicorp as a direct result of Gudger and Webb's misconduct. In *Yagman*, the district court made a "blanket award" of all of the other side's attorney's fees, making no effort to determine the extent to which those fees had been incurred as a result of the sanctionable conduct. *Id.* at 1184-85. Here, by contrast, the district court did evaluate the costs and fees, concluding that "at least 30% of the total defense costs can be attributed to Gudger and Webb's reckless litigation of this matter." In *Hudson v. Moore Business Forms, Inc.*, 898 F.2d 684 (9th Cir. 1990), we approved a virtually identical calculation. *See id.* at 687.

The district court's award of § 1927 sanctions does not constitute impermissible postjudgment retribution.

IV

Finally, Gudger contends that the district court erred in failing to allocate responsibility for the wrongdoing to Gudger and Webb individually. We fail to see how, because the district court did hold that each was fifty percent responsible, and it divided the total sanction award in half, imposing fifty percent on Gudger and fifty percent on Webb.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL L. SALSTROM and KATHIE SALSTROM, Plaintiffs, v. CITICORP CREDIT SERVICES, INC.; CONTINENTAL CREDIT SERVICES, INC., a Washington corporation; and FINANCIAL ASSISTANCE, INC., a Washington Corporation; LARRY ALDI; GUS CARLSON; and CITIBANK OF SOUTH DAKOTA, N.A., a South Dakota corporation; Defendants.	Civil No. 92-1226-AS FINDINGS AND RECOMMENDATION (Filed May 22, 1994)

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ASHMANSKAS, Magistrate Judge:

Defendants Citicorp Credit Services, Inc. ("Citicorp"), Larry Aldi ("Aldi") and Citibank of South Dakota, N.A. ("Citibank") (collectively the "Citicorp Defendants") move the court to impose sanctions against plaintiffs Michael L. Salstrom and Kathie Salstrom ("Plaintiffs") and their legal counsel Gregory L. Gudger ("Gudger") and Dean Browning Webb ("Webb") pursuant to the authority granted the court under Fed. R. Civ. P. 11 ("Rule 11") and 28 U.S.C. §1927. Specifically, the Citicorp Defendants seek to recover all of the attorney fees and costs incurred in defending this litigation as well as any additional monetary sanction the court feels appropriate. The Citicorp Defendants also ask the court to consider a number of nonmonetary sanctions against Webb and Gudger including barring Webb from being admitted *pro hac vice* in this court, barring Gudger from practicing in this court for a specified period of time and at least until the sanctions assessed against him are paid and proof of satisfaction thereof is provided to the court and requiring that copies of any order imposing sanctions be sent to the

Oregon and Washington State Bar Associations' Disciplinary Committees with reference the [sic] Gudger and Webb, respectively.

Defendants Financial Assistance, Inc. ("Financial") and Gus Carlson ("Carlson") (collectively the "Financial Defendants") move the court for sanctions pursuant to the court's inherent powers, Rule 11 and 28 U.S.C. §1927. Defendant Continental Credit Services, Inc. ("Continental") moves for an award of sanctions under the court's inherent power and 28 U.S.C. §1927. The Citicorp Defendants, the Financial Defendants and Continental (collectively "Defendants") have all also filed petitions for attorney fees and costs.

Background

The background of this case may be found in the court's earlier decisions and will not be repeated here.

Legal Standard

Rule 11

At the time this action was initiated and the acts complained of occurred, Rule 11 provided that:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or

> accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

In summary, by signing a pleading, a party certifies that, after reasonable inquiry, the pleading is well-grounded in fact and is warranted by existing law or a good faith extension, modification or reversal of law. Such a pleading cannot be filed for an improper purpose, such as to cause unnecessary delay or needless increase

in the cost of litigation. Rule 11 thus addresses the two problems of "frivolous filings" and the use of judicial procedures as a tool for "harassment." *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830 (9th Cir. 1986).

Sanctions may be imposed where a losing party acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *F.D. Rich Co., Inc. v. United States Industrial Lumber Co., Inc.*, 417 U.S. 116, 129 (1974). Sanctions are mandatory if the court concludes that Rule 11 has been violated. Fed. R. Civ. P. 11; *Huettig & Schromm, Inc. v. Landscape Contractors Council*, 790 F.2d 1421, 1426 (9th Cir. 1986). The standard is one of objective reasonableness under the circumstances. *Hudson v. Moore Business Forms, Inc.*, 827 F.2d 450 (9th Cir. 1987).

28 U.S.C. §1927

28 U.S.C. §1927 provides that:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

"The imposition of liability under this statute requires a finding that an attorney has acted 'recklessly or in bad faith.' " *United States v. Associated Convalescent Enterprises, Inc.*, 766 F.2d 1342, 1346 (9th Cir. 1985) (citing *United States v. Blodgett*, 709 F.2d 608, 610 (9th Cir. 1983); *Barnd v. City of Tacoma*, 664 F.2d 1339, 1343 (9th Cir. 1982). The

amount of the sanctions that may be imposed under this section is limited to the excess costs incurred by a party as a result of the opposing counsel's unreasonable conduct. *Id.* at 1347.

Inherent Power

In addition to the authority granted the court in Rule 11 and 28 U.S.C. §1927 to sanction both attorneys and parties, the court has the inherent power take whatever actions it deems necessary "to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962). This inherent power comes into play when the alleged misconduct of the parties is not limited to the pleadings filed with the court or when the court finds it appropriate to impose sanctions involving more than just the payment of the opposing counsel's fees. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 115 L.Ed.2d 27 (1991). However, this power must be exercised with restraint and discretion. *Id.* at 45. Sanctions, such as an award of attorney fees or disbarment, is appropriate when a party "act[s] in bad faith, vexatiously, wantonly, or for oppressive reason" or when a party "shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order". *Id.* at 45-6 (cites omitted).

Preliminary Procedural Matters

In his opposition to Defendants' motions for sanctions, Gudger assert [sic] that the recently amended version of Rule 11 should apply to the motions for sanctions currently pending before the court. Under 28 U.S.C.

§2074(a), the United States Supreme Court entered an order limiting the application of the amended Rule 11 to all proceedings commenced on or after December 1, 1993, in the absence of a determination by the lower court that failure to apply amended Rule 11 retroactively would result in an unjust or impractical determination. In this situation, the complaint was dismissed with prejudice on August 8, 1993. All of the conduct complained about by Defendants occurred and all of the motions for sanctions were filed prior to December 1, 1993. Consequently, it is evident that in the absence of a showing of prejudice to Plaintiffs, Gudger or Webb, the original Rule 11 would apply to the outstanding motions for sanctions. Gudger has failed to establish that the failure to apply the amended Rule 11 to the motions presently before the court would work an injustice. The court denies Gudger's appeal to consider these motions under the amended Rule 11.

Plaintiffs, Gudger and Webb also assert that Defendants' motions for sanctions are untimely. The court recognizes that the parties filed numerous motions for sanctions during the pendency of the action and that the court deferred consideration of the majority of the motions pending the outcome of the litigation. In light of this deferral, Defendants are not responsible for the untimely filing, if any, of these motions for sanctions.

The Financial Defendants move to strike the response of Gudger to their motion for sanctions asserting that the response was not timely filed. In light of the allegations made against Gudger and the severity of the remedies requested by the Financial Defendants, as well as the fact that the court has determined that the material contained

in Gudger's response is not outcome determinative, the court denies the Financial Defendants' motion to strike the response.

Discussion

THE CITICORP DEFENDANTS' MOTIONS

Rule 11 Violations

The Citicorp Defendants argue that the Plaintiffs and their legal counsel are subject to sanctions under Rule 11 for filing numerous pleadings which were not well grounded in either law or fact. The allegedly offensive pleadings include the following: the complaint and amended complaints; the motion for temporary restraining order and preliminary injunction; the first and second motions for summary judgment; the affidavits of the Plaintiffs, Gudger and Webb; and other miscellaneous pleadings. In addition, the Citicorp Defendants argue that sanctions are appropriate for Plaintiff's failure to comply with Fed. R. Civ. P. 8.

The First and Second Complaints

The Citicorp Defendants assert that neither the complaint nor the amended complaints are well founded in the law in that Plaintiffs failed to allege facts necessary to establish one or more predicate acts and a resulting pattern of racketeering activity, a racketeering enterprise, the maintenance or control of an interest in an enterprise through a pattern of racketeering, the use or investment of racketeering income or the existence of an agreement to engage in racketeering activities, all of which are

required elements under a claim for violation of either the Racketeer Influenced and Corrupt Organizations Act of 1970 ("RICO") or the Oregon Racketeer Influenced and Corrupt Organization Act of 1981 ("ORICO"). The Citicorp Defendants further argue that Plaintiff's RICO and ORICO claims were based on the erroneous belief that multiple assignments of collection accounts are illegal and that a chose [sic] in action must be assigned in writing. As evidence of their claim that the complaint and amended complaints were not well founded in fact, the Citicorp Defendants point to the allegations that the defendants engaged in criminal activity in an attempt to destroy Plaintiff's credit and extort additional money from Plaintiffs after the underlying judgment had been settled and that Mr. Salstrom operated a successful real estate and management business throughout the United States, as well as the proposed allegations that the defendants threatened to follow Plaintiffs and their two children.

As noted above, the court found that Plaintiffs originally presented this action in an inappropriate manner under the Federal Rules of Civil Procedure. Plaintiffs were given the opportunity to correct their pleadings and failed to do so. As a result, the court dismissed this action with prejudice. While the Citicorp Defendants present a valid argument that this action was frivolous *ab initio*, the court considers the dismissal of this lawsuit to be a more than sufficient sanction for the deficiencies in the complaint and amended complaints.

At this time, the court has only the allegations of the complaint before it. The lack of subsequent discovery and pleadings makes it extremely difficult to determine

whether the complaint is well grounded in fact. Furthermore, in light of the recent case in which the Supreme Court held that abortion clinics could state a viable RICO claim against right to life activists that demonstrated against the clinics,[1] it is difficult to say unequivocally that this action is not well grounded in law. The Citicorp Defendants' motion for sanctions under Rule 11 based on the complaint and amended complaints should be denied.

Motion for Temporary Restraining Order and Preliminary Injunction

The Citicorp Defendants assert that Plaintiffs' motion for preliminary injunction was not well grounded in law or in fact.[2] It appears that Plaintiffs sought an injunction preventing defendants from placing negative information on Plaintiffs' credit report or from further attmepts [sic] to collect the debt. At the hearing on the preliminary injunction motion, Mr. Salstrom testified that all negative references had been removed from his credit report and

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[1] *National Organization for Women v. Schiedler*, ___ U.S. ___, 1994 WL 13716 (U.S.).

[2] The Citicorp Defendants also argue that sanctions are appropriate for Plaintiffs motion for contempt and sanctions against Financial and Continental for their failure to respond to the motion for preliminary injunction when neither Financial nor Continental were required to respond. Any damages resulting from these pleadings would be suffered by Financial and Continental not the Citicorp Defendants. Therefore, it appears that the Citicorp Defendants do not have standing to complain about these pleadings and the court will not address this argument at this time.

that, as a result, his credit was "lily white." Judge Frye denied the motion.

The Citicorp Defendants assert that because the offensive remarks were removed from Plaintiffs credit report, the motion and the hearing were a waste of time. While this may support their argument that the motion was not well grounded in fact, it does not support their assertion that the motion was not well grounded in law. In addition, it appears, and the Citicorp Defendants concede, that Plaintiffs were requesting prospective relief from possible future actions by the Defendants. The fact that all past remarks had been removed from Plaintiffs credit report would not moot a request for relief from future actions. The court does not find that these pleadings warrant the imposition of sanctions against Plaintiffs, Webb or Gudger.

First and Second Motions for Summary Judgment

The Citicorp Defendants assert that Plaintiffs' two motions for summary judgment were improper in that they were filed even though a motion to dismiss was pending, the defendants had denied every allegation in the complaint and numerous genuine issues of material fact existed. In addition, the Citicorp Defendants assert that Plaintiffs attempt to file an amended complaint and to conduct discovery during the time their summary judgment was pending was improper and inconsistent with the filing of the summary judgment motions. Finally, the Citicorp Defendants complain that Plaintiffs' summary judgment motions and replies to the Citicorp Defendants' opposition to the summary judgment

motions were recycled from the pleadings generated in support of Plaintiffs' motion for preliminary injunction and, consequently, violated Rule 11.

Under Fed. R. Civ. P. 56, a party may file a summary judgment motion "at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party * * * ." The court is not aware of any rule that prevents a summary judgment motion from being filed while a motion to dismiss is pending or that requires all discovery to cease while a summary judgment motion is pending. Furthermore, while a party does represent to the court that it believes that it is entitled to judgment by filing a summary judgment motion, the party does not certify that there are no disputed issues of material fact by filing such a motion. In fact, the Ninth Circuit has stated, "No longer can it be argued that any disagreement about a material issue of fact precludes the use of summary judgment." *California Architectural Bldg. Products v. Franciscan Ceramics*, 818 F.2d 1466, 1470 (9th Cir. 1987), *cert. denied*, 484 U.S. 1006 (1988). Finally, the court can not say that the recycling of arguments in new pleadings justifies the imposition of sanctions. It appears that Webb and Gudger merely attempted to save Plaintiffs some money by not reinventing the wheel every time a new pleading was filed. While the timing and merit of Plaintiffs' motions for summary judgment may be debated, the misconduct with regard to the summary judgment motions in this action does not raise to the kind of vexatious, wanton or oppressive conduct intended to be deterred and punished under Rule 11.

Other Miscellaneous Pleadings

The Citicorp Defendants list a number of additional pleadings filed by Plaintiff that are allegedly not well grounded in law. The pleadings are labelled: Constructive Criticism; Requests to Recognize Proceedings; RICO Paradigm; Notice of Waiver of Oral Argument; Notice of Recent RICO Decision; and Motion to Renew Motion for Summary Judgment. The Citicorp Defendants argue that none of these pleadings exist under the Federal Rules of Civil Procedure and evidence a clear disregard for the law and the rules of the court. Additionally, the Citicorp Defendants argue that Plaintiffs references in these pleadings, as well as letters to the court, to cases that were either settled or dismissed or that have yet to be resolved were inappropriate.[3] Finally, the Citicorp Defendant [sic] complain that Plaintiffs attempted to subpoena documents from Creditors Protective without notice to any defendant.

Under Rule 11, the court is required to assess sanctions only if "a pleading, motion, or other paper is signed in violation of this rule * * * ." There is no requirement that sanctions be imposed if the parties have engaged in a campaign of questionable pleadings practices that might collectively warrant sanctions. As with the pleadings discussed above, the court does not find that any one of the

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[3] The Citicorp Defendants also complaint [sic] about reference to these cases made during oral argument to the court. Rule 11 applies only to pleadings filed with the court. Consequently, complaints about statements made in oral argument will not be addressed in this portion of the Findings and Recommendation.

pleadings, motions or papers, standing alone, represents sufficient misconduct to support an assessment of sanctions.

Affidavits of Michael L. Salstrom

The Citicorp Defendants point to representations made by Mr. Salstrom in his affidavit in support of Plaintiffs' motions for summary judgment which they allege were not well grounded in fact. Primarily, the Citicorp Defendants disapprove of Mr. Salstrom's description of the incident in which Sears revoked Mr. Salstrom's credit card as he attempted to purchase a washer and dryer as evidence that Citicorp destroyed Plaintiffs credit and subjected them to humiliation and financial injury.[4] Evidence submitted by Mr. Salstrom as an exhibit to his affidavit in support of the second motion for summary judgment shows that Plaintiffs' Sears credit card had actually been canceled as a result of Plaintiffs failure to pay the balance on the credit card and not the negative remarks placed by the Citicorp Defendants on Plaintiffs' credit report.

By signing the affidavit, Mr. Salstrom represented that he had read the affidavit, and that to the best of his "knowledge, information and belief formed after reasonable inquiry, it [was] well grounded in fact * * * ." Rule 11.

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[4] The Citicorp Defendant also assert that Mr. Salstrom's characterizations of their actions, including reference to drug-related suspicions, diabolical schemes and sordid books of misery are also not well grounded in fact. These statements are more of an editorial nature than statements of fact and while they may prove to be not well founded, are not appropriate misstatements of fact to warrant an award of sanctions.

In light of the evidence that Plaintiffs Sears card had been canceled as a result of Plaintiffs nonpayment, Mr. Salstrom's statement that the credit card was revoked because of the actions of the Citicorp Defendants was, if not a false statement, at least not well grounded in fact. The court finds that Mr. Salstrom violated Rule 11 by signing the affidavit and, consequently, is required to sanction Mr. Salstrom. However, the court finds that the sanction of dismissing Plaintiffs' complaint with prejudice is a sufficient sanction for Mr. Salstrom's violation and that additional sanctions are not warranted.

Affidavits of Kathie Salstrom

The Citicorp Defendants allege that Mrs. Salstrom misrepresented that Plaintiffs paid off their debt to Citicorp through Creditors Protective during the period from April 1988 through October 1989. It is undisputed that the debt was not paid by the Plaintiffs until November 1991. The Citicorp Defendants argue that Mrs. Salstrom's statements in her affidavits are obviously false. The court agrees that Mrs. Salstrom misrepresented the facts. However, it is unclear whether Mrs. Salstrom made that misrepresentation in 1988 and 1989 by falsely indicating that the debt had been paid when in fact it had not or whether she misrepresented the facts in her affidavit by stating that she had told the Defendants that the debt had been paid off. The court is unable to find that Mrs. Salstrom's affidavits contain false statements or that she violated Rule 11. Consequently, sanctions are not appropriate.

Affidavits of Attorneys Gudger and Webb

The Citicorp Defendants assert that the Gudger and Webb affidavits violated Rule 11 in that they contained accusations against the Citicorp Defendants' attorneys of invidious racism as well as other "numerous vicious, false and bizarre allegations against defendants and their counsel." The Citicorp Defendants also allege that Gudger and Webb misrepresented that the Citicorp Defendants did not serve its motion to strike and for sanctions on Plaintiffs through their attorneys.

The court has already voiced its displeasure with regard to the lack of cooperation and often unprofessional behavior in this action. Although this practice is regrettable, it is not sufficiently egregious to warrant the imposition of sanctions under Rule 11.

The misstatement of fact made by Gudger and Webb with regard to the lack of service was made prior to their receiving the motion to strike and for sanctions. At the time the statements were made, Gudger and Webb had, in fact, not been served with the motion and believed the statements to be true. Once the document was received, it appears that Webb filed a supplemental affidavit with the court indicating that service had been completed. This action is not a violation of Rule 11 and does not warrant the imposition of sanctions.

28 U.S.C. §1927 Violations

The court has addressed each of the alleged offensive pleadings independently under Rule 11. The Citicorp

Defendants now asks [sic] the court to consider the offensive acts as a whole under 28 U.S.C. §1927 and find that the actions unreasonably and vexatiously multiplied this action.

While the court has determined that the majority of the pleadings complained about do not, in and of themselves, require sanctions, the ugly picture that is generated when the pleadings are viewed together is a different story. The numerous and lengthy pleadings that were filed by Plaintiff, the timing involved in many of the filings and even the claims asserted by Plaintiffs in their complaint turned what should have been a simple straightforward debt collection action into a full-fledged assault by Plaintiffs against Defendants. This assault resulted in the expenditure of thousands of dollars by all of the parties on attorney fees and costs and hundreds of hours of attorney and court time, the majority of which was unnecessarily expended. Viewing the entire history of this litigation, it is undeniable that Gudger and Webb acted, at a minimum, in a reckless manner. As a result, they unreasonably and vexatiously multiplied the time and money expended on this litigation.

The Citicorp Defendants represent that they have expended the sum of $53,791.50 in attorneys fees and $2,226.84 in costs in defending this litigation. In light of the intertwined nature of the offensive and acceptable pleadings, it is impossible for the court to determine with mathematical precision the amount of attorney fees and costs incurred by the Citicorp Defendants as a direct result of Gudger and Webb's misconduct in this action. The court does find that at least 30% of the total defense costs can be attributed to Gudger and Webb's reckless

litigation of this matter. Accordingly, the court should impose sanctions against Gudger in the amount of $8,400.00 and against Webb in the amount of $8,400.00, which sums should be paid to the Citicorp Defendants.

Attorney Fees

The Citicorp Defendants assert that they are entitled to recover all attorney fees and costs incurred in this litigation "pursuant to O.R.S. 646.638(3), which applies to Oregon's Unfair Trade Practices Act, or O.R.S. 646.641(2), which applies to Oregon's Unlawful Debt Collection Practices Act." The Citicorp Defendants request attorney fees and costs in the amount of $53,119.34.

The Citicorp Defendants are entitled to an award of fees under these statutes only if the court finds that Plaintiffs' claims were frivolous under either Oregon's Unfair Trade Practices Act or Oregon's Unlawful Debt Collection Practices Act. As noted above, the court is unable to find, at this point in the litigation, that Plaintiffs' complaint was totally groundless in either law or fact. Consequently, the Citicorp Defendants' motion for attorney fees and costs should be denied.

THE FINANCIAL DEFENDANTS' MOTIONS

Rule 11 Sanctions

The Financial Defendants' motion for sanctions pursuant to Rule 11 is substantially similar to the motion of the Citicorp Defendants. The only new allegations of

misconduct revolve around the characterization of Plaintiffs' "real estate development and management" business in the complaint, subsequent pleadings and Mr. Salstrom's affidavit and misrepresentations by Mrs. Salstrom in her affidavits that the Financial Defendants received a fax providing them with proof that the debt had been satisfied and that the telephone calls made by Mr. Salstrom to the Citicorp Defendants were listed on Plaintiffs' telephone bills. The statements regarding the Plaintiffs' real estate matters in the complaint and subsequent pleadings, which the Financial Defendants admit was corrected in the amended complaint, are not sufficient to warrant sanctions beyond the dismissal of this action with prejudice. Further, while it appears that the new allegations of misrepresentations by Plaintiffs in their respective affidavits have merit, the court has already determined that Plaintiffs have been sufficiently sanctioned for violations of Rule 11 with the dismissal of this action. The court again declines to impose any monetary sanctions against Plaintiffs for their participation in this litigation.

28 U.S.C. §1927 Sanctions

As with the Financial Defendants' motion for sanction under Rule 11, the Financial Defendants' motion for sanctions under 28 U.S.C. §1927 repeats the claims made by the Citicorp Defendants and adds allegations relating to Gudger and Webb's failure to serve the Financial Defendants with either the motion for temporary restraining order or motion to show cause, Gudger and Webb's propounding of inappropriate interrogatories on the Financial Defendants without leave of court, Gudger

and Webb's inappropriate response to the Financial Defendants' request for production of documents and Gudger and Webb's refusal to allow Plaintiffs to be deposed. The court has already determined that Gudger and Webb have violated 28 U.S.C. §1927 and that the Defendants are entitled to recover those attorney fees and costs directly related to Gudger and Webb's wrongful conduct. Consequently, the court will not address the additional arguments forwarded by the Financial Defendants.

The Financial Defendants represent that they have expended the sum of $22,782.50 in attorneys fees and $126.45 in costs in defending this litigation. In light of the intertwined nature of the offensive and acceptable pleadings, it is impossible for the court to determine with mathematical precision the amount of attorney fees and costs incurred by the Financial Defendants as a direct result of Gudger and Webb's misconduct in this action. The court does find that at least 30% of the total defense costs can be attributed to Gudger and Webb's reckless litigation of this matter. Accordingly, the court should impose sanctions against Gudger in the amount of $3,450.00 and against Webb in the amount of $3,450.00, which sums should be paid to the Financial Defendants.

Inherent Power Sanctions

The Financial Defendants ask the court to consider the imposition of nonmonetary sanctions against Gudger and Webb under its inherent power to sanction. The court has found that Gudger and Webb acted in a reckless manner and vexatiously and unreasonably multiplied the

time and money expended on this litigation. Consequently, sanctions may be awarded under the court's inherent power if the court deems them appropriate in these circumstances.

The Financial Defendants appear to urge the court to impose the nonmonetary sanctions requested by the Citicorp Defendants in the introduction to their motion for sanctions. These sanctions include barring Webb from being admitted *pro hac vice* in this court, barring Gudger from practicing in this court for a specified period of time and at least until the sanctions assessed against him are paid and proof of satisfaction thereof is provided to the court and requiring that copies of any order imposing sanctions be sent to the Oregon and Washington State Bar Associations' Disciplinary Committees with reference to Gudger and Webb, respectively.

The court finds that the monetary sanctions awarded are not sufficient in this instance. Webb and Gudger should be made aware that their actions in this matter wasted valuable judicial resources and that such conduct is not condoned by this court. In furtherance of this goal, the court recommends that a copy of the order imposing these sanctions be provided to all federal judicial officers serving the District of Oregon. Furthermore, in an effort to advise the public and possible future clients of Gudger and Webb's conduct in this matter, the court recommends that a copy of the order imposing these sanctions be forwarded to the disciplinary committees of the state bar associations of Oregon, Washington and California.

Attorney Fees

The Financial Defendants request an award of reasonable attorney fees under O.R.S. 646.641 of the Oregon Unlawful Debt Collection Practices Act. Specifically, the Financial Defendants seek to recover $19,209.45 in attorney fees and costs. The court has already indicated that it is unable to find that the action filed by Plaintiffs under Oregon's Unlawful Debt Collection Practices Act was frivolous. Accordingly, the Financial Defendants motion for attorney fees and costs should be denied.

CONTINENTAL'S MOTIONS

28 U.S.C. §1972 Sanctions

Continental bases its motion for sanctions on the entire record but emphasizes the misconduct of Gudger and Webb as evidenced by the complaints, Plaintiffs' motion to strike Continental's counterclaim and for sanctions against Continental, Plaintiffs' motion to show cause why Continental should not be held in contempt for failure to respond to a motion that was not directed at Continental, Plaintiffs' original motion for summary, Plaintiffs' motion to renew its first motion for summary, Plaintiffs' second motion for summary and Plaintiffs' opposition to Continental's request for extension of time and motion for sanctions. The court has already found that, based on the entire record in this action, Gudger and Webb have engaged in activities which are subject to the imposition of sanctions under 28 U.S.C. §1927. This finding applies to Continental's motion for sanctions as well.

Continental represents that it has expended the sum of $12,601.00 in attorneys fees and costs in defending this litigation. In light of the intertwined nature of the offensive and acceptable pleadings, it is impossible for the court to determine with mathematical precision the amount of attorney fees and costs incurred by Continental as a direct result of Gudger and Webb's misconduct in this action. The court does find that at least 30% of the total defense costs can be attributed to Gudger and Webb's reckless litigation of this matter. Accordingly, the court should impose sanctions against Gudger in the amount of $1,900.00 and against Webb in the amount of $1,900.00, which sums should be paid to Continental.

Inherent Power Sanctions

Continental requests only that it be reimbursed for its attorney fees with regard to this action. The court has already recommended that Continental be reimbursed for those attorney fees generated by Gudger and Webb's misconduct. It appears that Continental now asks the court to impose sanctions under its inherent power in the amount of the attorney fees remaining unpaid. The court is of the opinion that the sanctions awarded under 28 U.S.C. §1927 are adequate and declines the opportunity to impose additional sanctions under its inherent power.

Attorney Fees

Continental petitions the court for an entry of judgment for attorney fees and costs in this litigation pursuant to O.R.S. 646.041(2). Continental represents that it has incurred $12,601.00 in attorney fees and costs in

defending this action. As stated previously, in order to award these costs, the court must find that this action was frivolous. The court does not so find. Consequently, Continental's motion for attorney fees and costs should be denied.

Conclusion

The Citicorp Defendants' motion (344) for sanctions under Rule 11 should be DENIED. The Citicorp Defendants' motion (344) for sanctions under 28 U.S.C. §1927 should be GRANTED. Gudger should be required to pay the Citicorp Defendants the sum of $8,400.00 and Webb should be required to pay the Citicorp Defendants the sum of $8,400.00. The Citicorp Defendants motion (346) for attorney fees and cost [sic] should be DENIED.

The Financial Defendants' motion (352) for sanctions under Rule 11 should be DENIED. The Financial Defendants' motion (352) for sanctions under 28 U.S.C. §1927 should be GRANTED. Gudger should be required to pay the Financial Defendants the sum of $3,450.00 and Webb should be required to pay the Financial Defendants the sum of $3,450.00. The Financial Defendants' motion (352) for nonmonetary sanctions under the courts inherent power should be GRANTED. A copy of the order imposing these sanctions should be provided to all federal judicial officers serving the District of Oregon and the disciplinary committees of the state bar associations of Oregon, Washington and California. The Financial Defendants' motion (369) for attorney fees and costs should be DENIED. The Financial Defendants motion (378) to strike the opposition brief of Gudger is DENIED.

Continental's motion (386) for sanctions under 28 U.S.C. §1927 should be GRANTED. Gudger should be required to pay Continental the sum of $1,900.00 and Webb should be required to pay Continental the sum of $1,900.00. Continental's motion (386) for additional monetary sanctions under the courts inherent power should be DENIED. Continental's motion (387) for attorney fees and costs should be DENIED.

DATED this 20th day of May, 1994.

/s/ Donald C. Ashmanskas
Donald C. Ashmanskas
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL L. SALSTROM and KATHIE SALSTROM,

Plaintiffs,

v.

CITICORP CREDIT SERVICES, INC.; CONTINENTAL CREDIT SERVICES, INC., a Washington corporation; FINANCIAL ASSISTANCE, INC., a Washington corporation; LARRY ALDI; GUS CARLSON; and CITIBANK OF SOUTH DAKOTA, N.A., a South Dakota corporation;

Defendants.

Civil No. 92-1226-AS

ORDER

(Filed Jul. 27, 1994)

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FRYE, Judge:

Honorable Donald C. Ashmanskas, United States Magistrate Judge, filed Findings and Recommendation on May 20, 1994. The matters before the court are the objections of Dean Browning Webb and Gregory L. Gudger to the Findings and Recommendation. When objections are filed to any portion of a magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the magistrate's report. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). The matter is before this court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

This court has, therefore, given *de novo* review of the rulings of Magistrate Judge Ashmanskas. This court ADOPTS the Findings and Recommendation of Magistrate Judge Ashmanskas dated May 20, 1994 in its entirety.

IT IS HEREBY ORDERED as follows:

The motion of defendants Citicorp Credit Services, Inc., Larry Aldi, and Citibank of South Dakota, N.A. (the Citicorp defendants) for sanctions under Rule 11 (#344) is DENIED. The motion of the Citicorp defendants for sanctions under 28 U.S.C. § 1927 is GRANTED. Gregory L. Gudger is required to pay the Citicorp defendants the sum of $8,400.00, and Dean Browning Webb is required to pay the Citicorp defendants the sum of $8,400.00. The motion of the Citicorp defendants for attorney fees and costs (#346) is DENIED.

The motion of defendants Financial Assistance, Inc. and Gus Carlson (the Financial defendants) for sanctions under Rule 11 (#352) is DENIED. The motion of the Financial defendants for sanctions under 28 U.S.C. § 1927 (#352) is GRANTED. Gregory L. Gudger is required to pay the Financial defendants the sum of $3,450.00, and Dean Browning Webb is required to pay the Financial defendants the sum of $3,450.00. The motion of the Financial defendants for non-monetary sanctions under the court's inherent power (#352) is GRANTED. A copy of the order imposing these sanctions shall be provided to all federal judicial officers serving the District of Oregon and to the disciplinary committees of the Bar Associations of the States of Oregon, Washington and California. The motion of the Financial defendants for attorney fees and costs (#369) is DENIED. The motion of the Financial defendants to strike the opposition brief of Gregory L. Gudger (#378) is DENIED.

The motion of defendant Continental Credit Services, Inc. (Continental) for sanctions under 28 U.S.C. § 1927

(#386) is GRANTED. Gregory L. Gudger is required to pay Continental the sum of $1,900.00, and Dean Browning Webb is required to pay Continental the sum of $1,900.00. The motion of Continental for additional monetary sanctions under the court's inherent power (#386) is DENIED. The motion of Continental for attorney fees and costs (#387) is DENIED.

DATED this 27 day of July, 1994.

/s/ Helen J. Frye
HELEN J. FRYE
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL L. SALSTROM, et al., Plaintiffs, and DEAN BROWNING WEBB, Appellant, v. CITICORP CREDIT SERVICES, INC.; FINANCIAL ASSISTANCE INCORPORATION, a Washington corp., Defendants-Appellees.	No. 94-35849 D.C. No. CV-92-01226-HJF ORDER (Filed Feb. 14, 1996)

Before: BROWNING, RYMER, and T.G. NELSON, Circuit Judges

Appellant's petition for rehearing is DENIED.